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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,311	11/23/2001	John Lezdey	1434-C	3058

7590

02/02/2004

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EXAMINER

LEVY, NEIL S

ART UNIT

PAPER NUMBER

1616

DATE MAILED: 02/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

* Restart due to Charge of
address wasn't processed.

B. Gray
1/30/04



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3

DATE MAILED: 03/31/2003

Restart

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Office Action Summary 10

Application No.

601311

Applicant(s)

Lezdey et al

Examiner

MBIC Levy

Group Art Unit

16/16

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—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 11/17/02
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-16 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-16 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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Receipt is acknowledged of change of address of 11/14/02.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1, part d is confusing, because of placement of; there could be 6 compounds at part d as it could currently be read. Also, it is unclear whether (claim 8) "non-complex" is supported, but if it is, it is unclear whether this is in addition to a+b+c+d, a) or b). Claim 10 is worse; the specification is directed to complexes; thus appears to be contrary.

Claims 8-10 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification is directed to complexes; the claims seem contrary and examiner fails to find "non-complex".

Claims 1-5, 8-12, 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Smith –WO97/20037.

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Smith provides the instant antimicrobial film: see example 1: 5.5% phenol, 1.5% o-phenyl phenol, 2.5% sucinic acid, 4% ADOGEN, 2% polymer, and the Balance methanol and water. This is claims 1, 2, 3 8-10. Polymers are at p.8, as is ethanol; thus meeting claims 5, 12 and 15. The other diamines are at p.5; thus meeting claim 4.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-6, 8-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Merchant et al.'61 in view of Wakao et al. 5760091 and Dellian et al. 3816071.

Merchant (p. 123 bottom, 124 top) show phenols the old disinfectants, known used alone or in combination, with particular attention to O-Phenylphenol. However, the instant combination and multiple forms for use are un addressed.

Wakao shows sea structure protective antimicrobial compositions comprising the instant amines (col.2, summary) col.4, line 1) with instant carboxylic acids (col.4, line 50, Table 7). Film forming agents include polymer, acrylic (col.6, lines 18-21). Solvents include water, ethanol (col.5, lines 60-62, col.6). Nonyl phenol is used at 0-10% (col.6, lines 21-23), amine at 10+% (line 75) col. 6), polymer at 3-30% (col.6, line 25) and solvent at 40-75% (lines 27-29). The second phenol is not seen.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a germicidal composition, to use a known germicide, as shown by Merchant combinable with additional actives and adjuvants

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depending upon the intended use, secondary references disclose the instant adjuvants. Dellian shows phenols smell; (col.4, lines 7-34) thus obviously one would add a faerence of choice 1, while acid of choice is also within the skill of one in the art . One having ordinary skill in the art would be motivated to perform this modification in order to optimize efficacy. The particular % mix of active, is a function of the compatibility of these ingredients.

There is no distinguishing disclosure of the instant compositions as providing any unobvious or unexpected results obtained since the prior art is well aware of the use biocompatible ingredients to provide active agents and of the combination thereof:

The selection of active ingredients and polymer forms are result effective parameters chosen to obtain the desired effects. It would be obvious to vary concentration and form of each ingredient to optimize the effect desired, and the use of ingredient for the functionality for which they are known to be used is not a basis for patentability. There has been no showing of criticality of the concentration, rations and selection of specific actives or adjuvants of the components of the instant compositions. Thus, the artisan would find it obvious to prepare particular ingredient combinations, concentrations and ratios of ingredients, depending upon the target species, length of time for desired effect and time desired to degradation.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is 308-2412. The examiner can normally be reached on Tuesday- Friday 7:00 am to 5:30 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees can be reached on 308-4628. The fax phone numbers for the organization where this application or proceeding is assigned are 308-4242 for regular communications and 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-1235.

Levy/tgd
March 27, 2003

A handwritten signature in black ink, appearing to read 'Neil S. Levy', with a stylized, cursive script.

NEIL S. LEVY
PRIMARY EXAMINER